



March 21, 2003

ENGROSSED HOUSE BILL No. 1791

DIGEST OF HB 1791 (Updated March 18, 2003 2:41 PM - DI 110)

Citations Affected: IC 24-3; IC 34-24.

Synopsis: Internet tobacco product sales. Requires a merchant who sells tobacco products to a person in Indiana through direct mail or the Internet to: (1) ensure that the customer is at least 18 years of age; and (2) pay the state cigarette and tobacco tax or provide notice that the customer is responsible for the unpaid state taxes on the cigarettes and tobacco products. Establishes penalties for violations.

Effective: July 1, 2003.

Hasler, Welch, Becker

(SENATE SPONSORS — MILLER, LANANE)

January 21, 2003, read first time and referred to Committee on Technology, Research and Development.

February 17, 2003, amended, reported — Do Pass. Recommitted to Committee on Ways and Means.

February 27, 2003, reported — Do Pass.

March 3, 2003, read second time, ordered engrossed. Engrossed.

March 4, 2003, read third time, passed. Yeas 90, nays 5.

SENATE ACTION

March 10, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.

March 20, 2003, amended, reported favorably — Do Pass.

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March 21, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1791

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-3-5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 5. Delivery Sales of Tobacco Products**

5 **Sec. 1. As used in this chapter, "delivery sale" means a**
6 **transaction for the purchase of tobacco products in which an offer**
7 **to purchase tobacco products is made electronically using a**
8 **computer network (as defined in IC 35-43-2-3) or by mail and**
9 **acceptance of the offer results in delivery of the tobacco products**
10 **to a named individual at a designated address.**

11 **Sec. 2. As used in this chapter, "merchant" means a person or**
12 **an entity that engages in the selling of tobacco products by delivery**
13 **sale.**

14 **Sec. 3. As used in this chapter, "tobacco product" has the**
15 **meaning set forth in IC 7.1-6-1-3.**

16 **Sec. 4. A merchant may not mail or ship tobacco products as**
17 **part of a delivery sale unless, before mailing or shipping the**

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1 tobacco products, the merchant:

2 (1) obtains from the prospective customer a written statement
3 signed by the prospective customer under penalty of perjury:

4 (A) providing the prospective customer's address and date
5 of birth;

6 (B) advising the prospective customer that:

7 (i) signing another person's name to the statement
8 required under this subdivision may subject the person
9 to a civil monetary penalty of not more than one
10 thousand dollars (\$1,000); and

11 (ii) purchasing tobacco products by a person less than
12 eighteen (18) years of age is a Class C infraction under
13 IC 35-46-1-10.5;

14 (C) confirming that the tobacco product order was placed
15 by the prospective customer;

16 (D) providing a warning under 15 U.S.C. 1333(a)(1); and

17 (E) stating the sale of tobacco products by delivery sale is
18 a taxable event for purposes of IC 6-7-1 and IC 6-7-2;

19 (2) makes a good faith effort to verify the information in the
20 written statement obtained under subdivision (1) by using a
21 federal or commercially available data base; and

22 (3) receives payment for the delivery sale by a credit or debit
23 card issued in the name of the prospective purchaser.

24 Sec. 5. (a) A merchant who mails or ships tobacco products as
25 part of a delivery sale shall:

26 (1) use a mailing or shipping service that requires the
27 customer or a person at least eighteen (18) years of age who
28 is designated by the customer to:

29 (A) sign to accept delivery of the tobacco products; and

30 (B) present a valid operator's license issued under
31 IC 9-24-3 or identification card issued under IC 9-24-16 if
32 the customer or the customer's designee, in the opinion of
33 the delivery agent or employee of the mailing or shipping
34 service, appears to be less than twenty-seven (27) years of
35 age;

36 (2) provide to the mailing or shipping service used under
37 subdivision (1) proof of compliance with section 6(a) of this
38 chapter; and

39 (3) include the following statement in bold type or capital
40 letters on an invoice or shipping document:

41 **INDIANA LAW PROHIBITS THE MAILING OR**
42 **SHIPPING OF TOBACCO PRODUCTS TO A PERSON**

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**LESS THAN EIGHTEEN (18) YEARS OF AGE AND
REQUIRES PAYMENT OF ALL APPLICABLE TAXES.**

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers tobacco products as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).
The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships tobacco products as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

- (A) sign to accept delivery of the tobacco products; and
- (B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

- (A) delivers the tobacco products without first complying with section 6(a) of this chapter; or
- (B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

Sec. 6. (a) A merchant shall, before mailing or shipping tobacco products as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.



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(b) A merchant who mails or ships tobacco products as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the tobacco products were delivered.

(2) The brand name of the tobacco products that were delivered to the customer.

(3) The quantity of tobacco products that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 is considered to satisfy the requirements of this section.

Sec. 7. (a) A merchant who delivers tobacco products to a customer as part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1; or

(2) place a legible and conspicuous notice on the outside of the container in which the tobacco products are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these tobacco products have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these tobacco products, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these tobacco products."

(b) For a violation of this section the alcohol and tobacco commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for



violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells tobacco products by delivery sale to a person less than eighteen (18) years of age.

The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 2. IC 34-24-1-1, AS AMENDED BY P.L.123-2002, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).



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- 1 (viii) Dealing in marijuana, hash oil, or hashish
 2 (IC 35-48-4-10).
- 3 (B) Any stolen (IC 35-43-4-2) or converted property
 4 (IC 35-43-4-3) if the retail or repurchase value of that property
 5 is one hundred dollars (\$100) or more.
- 6 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 7 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 8 destruction (as defined in IC 35-41-1-29.4) used to commit,
 9 used in an attempt to commit, or used in a conspiracy to
 10 commit an offense under IC 35-47 as part of or in furtherance
 11 of an act of terrorism (as defined by IC 35-41-1-26.5).
- 12 (2) All money, negotiable instruments, securities, weapons,
 13 communications devices, or any property used to commit, used in
 14 an attempt to commit, or used in a conspiracy to commit an
 15 offense under IC 35-47 as part of or in furtherance of an act of
 16 terrorism or commonly used as consideration for a violation of
 17 IC 35-48-4 (other than items subject to forfeiture under
 18 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
- 19 (A) furnished or intended to be furnished by any person in
 20 exchange for an act that is in violation of a criminal statute;
- 21 (B) used to facilitate any violation of a criminal statute; or
- 22 (C) traceable as proceeds of the violation of a criminal statute.
- 23 (3) Any portion of real or personal property purchased with
 24 money that is traceable as a proceed of a violation of a criminal
 25 statute.
- 26 (4) A vehicle that is used by a person to:
- 27 (A) commit, attempt to commit, or conspire to commit;
- 28 (B) facilitate the commission of; or
- 29 (C) escape from the commission of;
- 30 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 31 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 32 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 33 under IC 35-47 as part of or in furtherance of an act of terrorism.
- 34 (5) Real property owned by a person who uses it to commit any of
 35 the following as a Class A felony, a Class B felony, or a Class C
 36 felony:
- 37 (A) Dealing in or manufacturing cocaine, a narcotic drug, or
 38 methamphetamine (IC 35-48-4-1).
- 39 (B) Dealing in a schedule I, II, or III controlled substance
 40 (IC 35-48-4-2).
- 41 (C) Dealing in a schedule IV controlled substance
 42 (IC 35-48-4-3).

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- 1 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 2 (6) Equipment and recordings used by a person to commit fraud
 3 under IC 35-43-5-4(11).
 4 (7) Recordings sold, rented, transported, or possessed by a person
 5 in violation of IC 24-4-10.
 6 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 7 defined by IC 35-45-6-1) that is the object of a corrupt business
 8 influence violation (IC 35-45-6-2).
 9 (9) Unlawful telecommunications devices (as defined in
 10 IC 35-45-13-6) and plans, instructions, or publications used to
 11 commit an offense under IC 35-45-13.
 12 (10) Any equipment used or intended for use in preparing,
 13 photographing, recording, videotaping, digitizing, printing,
 14 copying, or disseminating matter in violation of IC 35-42-4-4.
 15 (11) Destructive devices used, possessed, transported, or sold in
 16 violation of IC 35-47.5.
 17 **(12) Tobacco and tobacco products that are sold in violation**
 18 **of IC 24-3-5, tobacco and tobacco products that a person**
 19 **attempts to sell in violation of IC 24-3-5, and other personal**
 20 **property owned and used by a person to facilitate a violation**
 21 **of IC 24-3-5.**
 22 (b) A vehicle used by any person as a common or contract carrier in
 23 the transaction of business as a common or contract carrier is not
 24 subject to seizure under this section, unless it can be proven by a
 25 preponderance of the evidence that the owner of the vehicle knowingly
 26 permitted the vehicle to be used to engage in conduct that subjects it to
 27 seizure under subsection (a).
 28 (c) Equipment under subsection (a)(10) may not be seized unless it
 29 can be proven by a preponderance of the evidence that the owner of the
 30 equipment knowingly permitted the equipment to be used to engage in
 31 conduct that subjects it to seizure under subsection (a)(10).
 32 (d) Money, negotiable instruments, securities, weapons,
 33 communications devices, or any property commonly used as
 34 consideration for a violation of IC 35-48-4 found near or on a person
 35 who is committing, attempting to commit, or conspiring to commit any
 36 of the following offenses shall be admitted into evidence in an action
 37 under this chapter as prima facie evidence that the money, negotiable
 38 instrument, security, or other thing of value is property that has been
 39 used or was to have been used to facilitate the violation of a criminal
 40 statute or is the proceeds of the violation of a criminal statute:
 41 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic
 42 drug, or methamphetamine).

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- 1 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
- 2 substance).
- 3 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- 4 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
- 5 as a Class B felony.
- 6 (5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or
- 7 methamphetamine) as a Class A felony, Class B felony, or Class
- 8 C felony.
- 9 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
- 10 a Class C felony.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred House Bill 1791, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 13, delete "tobacco" and insert "**cigarettes**".

Page 1, line 14, delete "products".

Page 2, delete lines 37 through 42.

Page 3, delete lines 1 through 8, begin a new paragraph and insert:

"SECTION 3. IC 6-7-2-24 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2003]: **Sec. 24. (a) As used in this section, "face to face sale" means a sale in which the consumer is in the physical presence of the seller at the time of the sale. The term does not include a transaction conducted:**

- (1) through the mail;**
- (2) on the Internet;**
- (3) on the telephone; or**
- (4) by any other method;**

in which the consumer is not in the physical presence of the seller at the time of the sale.

(b) Except as provided in subsection (c), a sale of tobacco products must be a face to face sale.

(c) A person may engage in a sale of tobacco products that is not a face to face sale if:

- (1) all applicable taxes under this chapter have been paid; or**
- (2) the seller places a legible and conspicuous notice on the outside of the container in which the tobacco products are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and shall state the following:**

"If these tobacco products have been shipped to you from a seller located outside the state in which you reside, the seller has reported under federal law information about the sale of these tobacco products, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these tobacco products."

(d) The department may bring suit to enforce this section. If a court enters a judgment for a violation of this section, the court shall impose, in addition to any other remedies, a civil penalty as follows:

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(1) If a defendant has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If a defendant has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If a defendant has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If a defendant has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If a defendant has five (5) or more unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1791 as introduced.)

HASLER, Chair

Committee Vote: yeas 13, nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1791, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 26, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1791, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

Delete everything after the enacting clause and insert the

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1791 as printed February 28, 2003.)

SERVER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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